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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,820	09/08/2003	Ashok V. Joshi	MIC-031103	1133
22876	7590	09/08/2005	EXAMINER	
FACTOR & LAKE, LTD 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,820

Applicant(s)

JOSHI, ASHOK V.

Examiner

Darwin P. Erez

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 17 June 2005.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-51 is/are pending in the application.  
4a) Of the above claim(s) 1-16, 24, 25, 30-33, 37, 38 and 42-51 is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 17-23, 26-29, 34-36 and 39-41 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species 7 (and 8) in the reply filed on 6/17/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

With regard to the listing of claims that are readable on the elected Species, the Examiner does not agree that claims 1,2 and 14-16 are readable on species 7 or 8, which are directed towards a wound healing device comprising an osmotic cell. In fact, claims 1, 2 and 14-16 are readable on a different species, a wound healing device comprising means for absorbing and removing oxygen from within the cavity. Species 7 and 8 are directed towards removing fluids from a sponge and not absorbing oxygen. Claims 1, 2 and 14-16 are not generic and are therefore withdrawn along with the nonelected species.

2. Claims 1-16, 24, 25, 30-33, 37, 38 and 42-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/17/05.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 17, 18, 22, 23, 34-36 and 39-41 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,636,643 to Argenta et al.

(claims 17 and 34) Argenta teaches a disposable wound-therapy device comprising a fluid-impermeable housing **118** having a cavity (Fig. 4), wherein the cavity includes at least one opening to encompass a wound **14**; a perimeter **109** surrounding said opening; means for sealing **117** the perimeter to a surface of the patient; a porous sponge **100** associated with the cavity; and means for removing fluid from the sponge and out of the cavity (via suction port **104**).

(claims 18 and 36) Argenta teaches the fluid removing means being integrated into the housing (a port of said housing).

(claims 22 and 39) Argenta teaches a fluid retention chamber **33** that is adjacent the cavity (adjacent is a relative term).

(claim 23) Argenta teaches the sponge to be within the cavity.

(claim 35) Argenta teaches a device that is fully capable of continuously removing fluid from within the wound region if the suction source is continuously maintained.

(claims 40 and 41) Argenta teaches a filter **38** for absorbing and retaining fluids, wherein the filter comprises a porous matrix (inherent in a filter).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et al. in view of US 5,868,933 to Patrick et al.

Argenta teaches all the limitation of the claim except for the foam impregnated with antimicrobial fluids. However, Patrick teaches that is common and well known in the art to impregnate a foam-type material with antimicrobial fluid, especially for medical use (col. 5, lines 26-41). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sponge of Argenta to include the antimicrobial fluid, as taught by Patrick, because it would help prevent the wound area from getting infected/contaminated.

7. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et al. in view of US 2003/0050594 to Zamierowski.

Argenta teaches the removing means as a vacuum-type fluid removal means. Argenta is silent with regards to an osmotic type removal means. However, Zamierowski teaches an electro-osmotic type removal means (starting at paragraph 90), which would inherently have an anode and cathode since electro-osmosis necessarily requires a gradient difference, e.g., negative and positive. Therefore, it would have been obvious to use the removal means of Zamierowski in the device of Argenta because selecting a specific type of removal means would be a mere design to one of ordinary skill in the art, especially since the removal means taught by Argenta and the

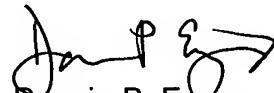
removal means taught by Zamierowski perform the same function of removing fluids from the wound area.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darwin P. Erezzo  
Examiner  
Art Unit 3731